

## **REMARKS**

### **I. Introduction**

Applicants note with appreciation the Examiner's indication that claims 13 and 14 would be allowable if rewritten in independent form including all limitations of the base claim and any intervening claims. Applicants reserve the right to present claims 13 and 14 in independent form, but in this response submit arguments about why claim 1 (from which claims 13 and 14 depend) should be considered patentable over the cited reference.

Upon entry of the present amendment, claims 1-12 and 36-48 will remain pending in this application. Claim 1 has been amended to clarify that the number of attachment structures (n) in the system is a multiple of 3, but is a number greater than 3. Claim 14 has been amended to correct the spelling of "cord" to "chord." Claims 36 and 45 have been amended to correct the tense of "space" to "spaced" and to clarify that there are at least 6 attachment structures on each plate. No new matter has been added.

Based on the following remarks, Applicants respectfully request reconsideration and allowance of the pending claims.

### **II. 35 U.S.C. § 102**

The Examiner has rejected claims 1-14 and 36-48 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,728,095 to Taylor. The Examiner states that the Taylor patent discloses an orthopedic fixation device as claimed including 2 rings having 6 attachment structures. The Examiner also states that the introductory statement of intended use and the equation have been carefully considered but are deemed not to impose any

structural limitations on the claims distinguishable over the '095 device. Applicants submit that the '095 patent does not teach the invention as presently claimed, and respectfully traverse this rejection and request reconsideration and withdrawal thereof.

As the Examiner has correctly noted, the external fixator of the '095 provides 2 rings; the struts are attached at three places per plate, which results in a number of 6 total attachments for the system. Specifically, each plate of the '095 patent has three spherical cavities 79 designed to cooperate with spherical members of connectors. *See, e.g.*, Figures 2, 6, 7, and 40. The total system, including both plates, includes 6 attachment structures.

Each of the partially spherical cavities 79 in the ring 71 of each base member 19, 21 is preferably sized and designed for rotatably entrapping a respective pair of the partially spherical members 105, 107 of the connector means 59, 61, 63, 65, 67, 69 with the planar face portions 109 thereof held movably against one another (see, for example, FIG. 4).

Col. 14, lines 28-35 of the '095 patent.

By contrast, Applicants' invention as presently claimed includes more than 3 attachment structures (n) on each plate. For example, claim 1 as currently amended recites that "the value for  $n(360 \alpha)$  for each consecutive plate diameter  $d$  in the system is a multiple of 3, but is a number greater than 3." Claims 36 and 45 recite fixation plates with "the number of attachment structures on each plate being at least 6 and a multiple of 3." This is relevant because, by providing more than 3 attachment structures per plate, the presently-claimed invention provides a plurality of options for fixation. On the other hand, the '095 patent does not disclose or suggest providing more than 3 attachment structures per plate, and consequently, the surgeon is left using only the fixation locations provided.

## CONCLUSION

For at least the above reasons, Applicants respectfully request allowance of claims 1-14 and 36-48 and issuance of a patent containing these claims in due course. If there remain any additional issues to be addressed, the Examiner is urged to contact the undersigned attorney at 404.815.6147.

Respectfully submitted,

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